

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

JOHN W.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

OAH No. 2011020360

**DECISION**

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on May 17, 2011.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Specialist and Hearing Designee.

Claimant represented himself. Claimant and ACRC Intake Counselor, Wendi McCray, M.A., appeared telephonically from the regional center office in South Lake Tahoe.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

**ISSUES**

Is claimant eligible for regional center services based on a qualifying disability pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?<sup>1</sup>

---

<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

## FACTUAL FINDINGS

1. Claimant is a forty-three year old unconserved man seeking services from ACRC. He is one of six siblings, two of whom died as infants. He grew up in Canada and his childhood was described as “unstable” and “chaotic” as he lived in numerous foster and group homes. He has limited contact with family members. At eighteen, claimant moved to the United States where he has lived with a variety of people in various living situations. Claimant moved to South Lake Tahoe from Southern California in April, 2010. He currently lives independently in a “month to month hotel.” Claimant was diagnosed with schizophrenia at approximately sixteen years of age and he has a strong family history of that disease as well as other mental health disorders.

2. On December 22, 2010, ACRC Intake Counselor, Wendi McCray, M.A., completed a Social Assessment of claimant. The ACRC Interdisciplinary Team then met on January 10, 2011, to determine claimant’s eligibility for services. After considering the December 22, 2010 Social Assessment, as well as records received from Barton Community Clinic, the team determined that claimant was not eligible for regional center services.

3. As a result of the eligibility team determination, A Notice of Proposed Action (NOPA) was issued on January 11, 2011, informing claimant that he did not meet the criteria for ACRC eligibility. The NOPA stated:

The Team determined that [claimant] is not eligible for services as he does not present with mental retardation, cerebral palsy, epilepsy, autism, or a condition similar to mental retardation or require treatment similar to that required by individuals with mental retardation. Records also indicated that [claimant] was determined not eligible for Regional Center Services in Southern California within the last year.

4. On February 2, 2011, claimant filed a Fair Hearing Request, disputing his ineligibility for services stating, “New information came up. Everything wasn’t included the 1<sup>st</sup> X.” Claimant referred to hospital records from Canada as the additional information required.

5. A Fair Hearing Decision—Informal Meeting was held on March 7, 2011. In attendance were: claimant; Wendi McCray, ACRC Intake Counselor; Dr. Phyllis Magnani, Ph.D., ACRC Staff Psychologist; and Robin Black, ACRC Legal Services Specialist and Designee of ACRC Executive Director. The Designee’s Decision from this meeting was as follows:

All of the available information and records indicate that [claimant] suffers from severe mental health disorders, and chiefly schizophrenia. Individuals whose disability is primarily a result of mental health disorders are not eligible for regional center services, as these are not considered to be developmental

disabilities under California law. Further, only individuals with a substantially handicapping developmental disability as defined by California law, which began prior to age 18, may be eligible for regional center services. ACRC has received no records or information about [claimant's] condition or functioning prior to age 18.

**Based upon a review of all of the relevant evidence, as well as consideration of the information provided at the Informal Meeting, [designee] has determined that there is no evidence that [claimant] has a developmental disability as defined by California law. Therefore, [claimant] is NOT ELIGIBLE for regional center services.**

[Claimant] is encouraged to provide ACRC for its review any records relating to his condition and functioning prior to age 18, including but not limited to records which [claimant] has indicated are being sent from Canada.

6. At the Informal Meeting, claimant stated that there were records from his childhood in Canada that he believed would support his claim for regional center eligibility and that he had provided ACRC with contact information for those records. Ms. Black informed claimant that records were requested from Winnipeg Mental Health/Sciences Center in January 2011, but nothing had been received.

These records were subsequently provided to ACRC with a cover letter dated March 3, 2011, and arrived after the Informal Meeting but prior to the hearing on this matter. The information contained in these records did not cause ACRC to change its prior determination that claimant is not eligible for regional center services.

7. It was also noted that claimant previously requested In-Home Supportive Services (IHSS) from Imperial County and was notified on December 1, 2008, that "your application for In-Home Services dated 08/06/2008 has been denied."

8. Pursuant to the Lanterman Act, section 4500, et seq., regional centers accept responsibility for persons with developmental disabilities. Section 4512 defines developmental disability as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual....[T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required

for individuals with mental retardation [commonly known as the “fifth category”], but shall not include other handicapping conditions that are solely physical in nature.

9. California Code of Regulations, title 17, section 54000, further defines the term “developmental disability” as follows:

(a) “Developmental Disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

10. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as:

(l) The existence of significant functional limitation in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

11. Claimant would like to receive services because he would like “a parent-like person.” He would also “like assistance with knowing what is nutritional for him at the grocery stores (mostly help with vegetables and fruits) and how long food lasts.” Claimant testified that what he desires is like “a tune-up on a car, so I don’t fall back on bad habits.” He just “wants to complete the process.”

12. Wendi McCray, M.A., has been an ACRC Service Coordinator for approximately eight years and has served as the Intake Coordinator for the South Lake Tahoe region for approximately five years. In that capacity, she received claimant’s referral to ACRC from El Dorado County Mental Health (EDCMH). Ms. McCray testified that claimant is currently being treated by EDCMH for his diagnosis of schizophrenia. The referral noted that the “suspected diagnosis is mental retardation or borderline intellectual functioning. It was not clear in the referral what behavior mental health suspected to be of DD (Developmental Disability) in nature.”

13. Ms. McCray conducted a three hour intake assessment with claimant who “also brought his girlfriend (a stuffed teddy bear who he introduced as his girlfriend when he arrived to the office – when he called last week to reschedule the assessment he had asked [Ms. McCray] if he could bring his girlfriend and stated she was a stuffed animal—[Ms McCray] stated she was okay with that. During the 3 hour intake assessment, [claimant] did not interact with his girlfriend at all.”

In compiling her Social Assessment report, Ms. McCray relied on information gathered from the interview with claimant, a brief interview with his mother and review of requested medical and mental health records.

Ms. McCray also noted that claimant “went through an Intake at a Regional Center in Southern California but was found ineligible when he was 42.”

14. Ms. McCray testified that claimant was “very relaxed and talkative.” He had “good communication skills, although at times his conversation would drift away from the current topic but he was easily redirected. ([Claimant] even told [Ms. McCray] to redirect him if he got off track).” She opined that claimant “came across as being intelligent.”

In the interview, Ms. McCray noted the following:

[Claimant] recently got the new Droid phone and had updated all his personal information and address book in it with ease. [Claimant] was able to describe technical issues regarding his phone, some of which would have been difficult for this IC (Intake Coordinator) to figure out in a short period of time but he was willing to show IC how to do it on the phone. His language during his conversation was above basic language skills. [Claimant] appears very organized and informed about important things that go on in his life. He showed the IC on his phone how he had all his emergency contacts on it with important information. He also carried a notebook that had important numbers and lists of his medications, medical doctors, agencies that he has worked with, etc. . . Along with his cell phone, he also carries a pager (“for emergencies”) and has a laptop that he is able to use. He is also able to call the help desk and set up the settings on all his electronic devices with minimal assistance. [Claimant] is also fluent on Facebook and able to look up his phone bill online.

15. Claimant’s mother resides in a nursing home in Canada, where claimant lived as a child. Ms. McCray was able to speak with her by telephone. She confirmed claimant’s childhood history noting that her children were served through Children’s Aid of Ontario through Ministry for Children. She stated that she and her husband, who has since passed away, had “regular physical contact with all the kids along with communication but did not live with them regularly.” When asked about claimant’s schooling, his mother could not remember but believed the school records could be obtained from the Ministry for Children in Ontario, Canada. She did state that claimant’s father “believed in appropriate education for their children and had each child repeat 2<sup>nd</sup> and 3<sup>rd</sup> grade since he felt these were crucial learning times and repeating would give them more education.”

16. Claimant informed Ms. McCray that he is “studying for his GED with a tutor through his church that is studying with him.” He stated that he “already took the practice test and is waiting to hear from the person through Adult Education to see how he did.” He could not recall details of his education except that he “was taken out of school in 11<sup>th</sup> grade.” He stated that he “went to many schools and could not remember which school he attended last.”

17. Ms. McCray contacted the Ministry for Children in Ontario, Canada and was informed that they only keep records for ten years and it had been more than twenty-seven years since claimant was in the system. There was no evidence presented that claimant participated in any special education or other programs that would be relevant for his eligibility determination.

18. Claimant describes himself as friendly and shy depending on the situation. He has friends through his recovery group at EDCMH and is active with friends on Facebook. When describing his friends to Ms. McCray, he addressed them as real or imaginary but did not place his girlfriend (teddy bear) in either category. "Bridgette" was identified as an imaginary friend that is a voice in his head. He informed a staff person at EDCMH about Bridgette in case she calls her but stated that "there was nothing he could do unless she shows up again and does something bad." Claimant also maintains a relationship with a staff person (Margie) from Mental Health in El Centro, California, with whom he talks often since "she is the only one who understands about Bridgette."

Claimant stated that he has had a few "run ins with the law" but was never charged or arrested. He stated that the "couple of times that he was arrested it was Bridgette being arrested". He stated that these "arrests were due to anger and assaultive behaviors that she did in the community."

Claimant mentioned that he liked babysitting kids and did it for awhile when he was younger. He wanted to adopt a baby but his counselors at El Centro Mental Health stated it would not be appropriate because of Bridgette.

19. Claimant stated that he has worked at McDonalds, Burger King and other restaurants in towns he has visited, on both the food assembly line and as a dishwasher. He would like to work gardening and/or fixing tools and would also like to get his "big rig" license. He volunteers helping people in his community and stated that he teaches in the Mormon Church. Claimant collects "Franklin Mint" coins. Sometimes he gets free gifts with the coin purchase and he later sells the items on Craig's List or by other means.

20. In claimant's assessment report, Ms McCray describes his adaptive skill domains as follows:

[Claimant's] daily/weekly schedule consists of cleaning house, laundry, going to Recovery Center (4 days/week), relax and watch T.V., takes bus around town to church, store, etc. and talk/visit people.

**Communication:** [Claimant] is able to communicate in full, intelligible, complete sentences. He had good receptive skills throughout the assessment. He does tell stories that are off topic at times but he is easily redirected back to topic. His ability to have a give and take conversation is limited due to his easy

distractibility but once on track, is able to carry on the conversation appropriately.

**Learning:** [Claimant] can read, write and do math (which he demonstrated during the assessment.) He is very knowledgeable in technical terms when it comes to his laptop, Droid phone and pager. He can tell time on analog and digital clocks (which he demonstrated).

**Self-care:** [Claimant] is independent in all areas of self-care. He was well groomed for the assessment and did not have any body odor or bad breath. He admits that he does not take his medications willingly at times, especially since Bridgette has not been around lately so he feels that they are not necessary at this time.

**Self-direction:** [Claimant] takes initiative in his life and with tasks (he states that he is always cleaning his place and staying on top of his checking account and bills). Given a scenario—he knows what to do in a medical and fire emergency. He is very independent with a phone which he demonstrated during the assessment. He states that he does not have poor judgment but Bridgette does. When he was homeless, he would go to friends' houses and offer cleaning the house, cooking, etc. in exchange for room and board.

**Mobility:** He is independent on public transportation. He knows how to drive a car but does not have his license.

**Capacity for Independent Living:** [Claimant] can cook meals with various appliances, grocery shop (but would like help with picking more nutritional foods and how long food is good for at the grocery store, he is very proactive and asks the butcher or clerks about shelf life and how to properly freeze or store food). He cleans his place regularly and does his own laundry without assistance or prompting. [Claimant] is able to manage his own checking account along with making sure his bills are paid on time. He is his own payee.

**Economic Self-Sufficiency:** [Claimant] has had jobs in the past but not for long periods of time. Currently, he sells “free items” that he receives from Franklin Mint that he receives when he gets his coins in. He advertises the items in the paper, handles the calls and meets up with potential buyers (a potential buyer had called during the assessment—[claimant] was polite, professional on the



phone and let the caller know he was in a meeting and would call them back after he was done).

21. Claimant has an extensive psychiatric history and has received counseling throughout his life through multiple psychiatric hospitalizations and mental health centers. Ms. McCray noted that “one psychiatric hospitalization was voluntary which turned into a 5150 and the others were all 5150.”<sup>2</sup>

22. A Comprehensive Assessment by El Dorado County Mental Health dated July 27, 2010, stated that claimant “presents with symptoms of schizophrenia, specifically AH (Auditory Hallucinations).” This assessment showed DSM-IV-TR Axis I <sup>3</sup>diagnoses of “296.9 Bipolar D/O, NOS, RO and 312.30 Impulse Control D/O, NOS, RO.” Nothing was noted on Axis II.

23. Provided records from the Barton Community Clinic, dated December 30, 2010, noted a diagnosis of Schizophrenia (295.90). Also noted were diagnoses of “Hypertension, Gastritis, Asthma and Finger Blister Without Mention of Infection.” There were no Axis II diagnoses noted.

---

<sup>2</sup> Section 5150 provides: “ When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.”

<sup>3</sup> The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) is the current standard for diagnosis and classification. It is a multiaxial system which involves five axes, each of which refers to a different domain of information as follows:

Axis I	Clinical Disorders
	Other Conditions That May Be a Focus of Clinical Attention
Axis II	Personality Disorders
	Mental Retardation
Axis III	General Medical Conditions
Axis IV	Psychosocial and Environmental Problems
Axis V	Global Assessment of Functioning

These records indicated, “Schizophrenia uncontrolled: discussed in great detail. Pt needs to take meds DAILY.” Also discussed were claimant’s voices: “pt likes most of his voices, has new voice, which is a teddy bear he calls his girlfriend. Pt also with ‘bad’ voice name bridget...”

Claimant had a neurofibroma excision performed at the Clinic on his left long finger.

24. The medical records mailed from Health Sciences Center Winnipeg on March 3, 2011, included “Discharge Summaries (May 31/88, Feb 3/87), Emergency Records (ul 11/93, May 24/88, May 7/88), Emerg, Consult (Apr 30/88).” This information related to claimant from the ages of nineteen through twenty-five.

These records referenced numerous admissions including a one month stay at the Health Sciences Center (HSC) in 1987 when he was admitted with a diagnosis of paranoid schizophrenia. There were also a ‘high number of Emergency Room visits to HSC, with various physical complaints.” Throughout the records, visits were attributed to “chronic schizophrenia,” “homicidal/suicidal ideation with paranoid schizophrenia,” and “long history of attention seeking.” There was also mention of “borderline intelligence,” “borderline mental retardation” or “borderline intellectual functioning.” However, these terms were nowhere defined, and no evidence of intellectual testing was shown. At no time was an AXIS II diagnosis made.

25. Phyllis Magnani, Ph.D., is an ACRC Staff Clinical Psychologist. In that position she has participated in hundreds of assessments, and she was a member of the eligibility team that reviewed claimant’s request for eligibility. She explained that an individual must have one of five conditions to be eligible for regional center services: autism, cerebral palsy, epilepsy, mental retardation, or a condition closely related to mental retardation or one which requires treatment similar to that required for individuals with mental retardation. Dr. Magnani testified that based on a review of the evidence, claimant does not appear to have any of those conditions.

Dr. Magnani also explained that another requirement for regional center eligibility is that the condition must have originated before age eighteen. ACRC has not received any information regarding claimant prior to age eighteen.

26. The diagnostic criteria for “Mental Retardation” as set forth in section 4512 is defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) to require:

A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test...

B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her culture group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

C. The onset is before 18 years.

27. The DSM-IV-TR provides a multiaxial classification system consisting of five axes which each refer to a different domain of information. Mental Retardation is reported on Axis II. Claimant shows no Axis II diagnosis in any provided records, nor was there any record of subaverage intellectual functioning.

28. The evidence presented demonstrates that claimant is not eligible for ACRC services based upon a diagnosis of mental retardation.

29. In addressing eligibility under the fifth category, the Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

...The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

30. Dr. Magnani opined that Claimant did not demonstrate a degree of global intellectual impairment similar to that possessed by persons with mental retardation, nor are his adaptive skills consistent with those of a individual with mental retardation. She also testified persuasively that any deficits in claimant's adaptive skills would most likely be related to his mental health conditions rather than any cognitive limitations, and she would "assume that his mental health diagnoses are the cause of his difficulties."

Nor were the treatments required for these conditions demonstrated to be similar to those specifically required by an individual with mental retardation. Claimant would be better served from a treatment perspective of an individual with psychiatric disorders. Those treatments would not be the same or similar to those required by individuals with mental retardation.

31. There was no evidence presented to demonstrate that claimant suffers from cerebral palsy, epilepsy or autism.

## LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual....[T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation [commonly known as the “fifth category”], but shall not include other handicapping conditions that consist solely physical in nature.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

2 Schizophrenia does not qualify as a developmental disability, as that term is defined in section 4512, subdivision (a), and in fact is specifically excluded under California Code of Regulations, title 17, section 54000, subdivision (c)(1).

3. The evidence was persuasive that claimant has limitations. He has an extensive mental health history, primarily evidenced by his diagnosis of schizophrenia. While he is certainly impaired by this condition, the evidence did not prove that claimant’s current impairments resulted from a qualifying condition which originated and constituted a substantial disability before the age of eighteen. There was no evidence to support a finding of mental retardation or a condition closely related to mental retardation, or that requires treatment similar to that required for individuals with mental retardation. It was not established that claimant has autism, cerebral palsy or epilepsy. Accordingly, he does not have a developmental disability as defined by the Lanterman Act and is not eligible for services through ACRC.

//

//

## ORDER

Claimant's appeal from the Alta California Regional Center's denial of services is denied.

DATED: May 23, 2011

---

SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**